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August 14, 2015

**BY ECF & EMAIL (Andrei Vrabie@nysd.uscourts.gov)**

Honorable Robert W. Sweet  
United States District Judge  
Southern District of New York  
500 Pearl Street  
New York, New York 10007

Re: *Schoolcraft v. The City of New York, et al.*, 10-CV-6005 (RWS)

Your Honor:

I am a Senior Counsel in the office of Zachary W. Carter, Corporation Counsel of the City of New York, assigned to represent the City Defendants in the above-referenced action. I write in further support of the City Defendants' motion to strike Plaintiff's Reply Memorandum of Law in Further Support of his Motion for Reconsideration (Docket No. 464), to reply to plaintiff's letter of August 7, 2015 in opposition to the motion to strike.<sup>1</sup>

Plaintiff states in his August 7, 2015 letter that he "changed the date on his calendar one week from the new date" because the parties "consented to a one-week adjournment". This is not so. The parties agreed to extend the Reply deadline "from July 17 to July 23". See Exhibit A annexed hereto (emails exchanged among all parties dated 7/15/15 agreeing to the specific date of July 23<sup>rd</sup> and plaintiff expressly opposing any movement of "the other dates, including the JPTO dates") (Emphasis added).<sup>2</sup>

The July 23<sup>rd</sup> date was subsequently memorialized by letter application to the Court (Docket No. 455) and "so ordered" by Your Honor. (Docket No. 458) (setting deadline to July 23<sup>rd</sup>). Docket entry No. 458 explicitly stated "Replies due by 7/23/2015." The City Defendants,

<sup>1</sup> Co-Defendants Jamaica Hospital Medical Center and Steven Mauriello joined in the application.

<sup>2</sup> Notably, on August 13<sup>th</sup>, plaintiff sought an extension of the JPTO deadline, without consent of the parties, which application defendants intend to oppose in a separate filing to the Court next week.

as well as Jamaica Hospital Medical Center and Steven Mauriello (the other parties who filed briefs opposing plaintiff's motion for reconsideration) all correctly understood that the filing deadline was July 23<sup>rd</sup> and submitted papers on that day. Thus, there was no ambiguity in the filing deadline and plaintiff's alleged understanding to the contrary is not based upon facts supported by the record.

In addition, plaintiff's delayed filing also exceeded the Court's page-limit requirements by 40%. Plaintiff offers no explanation for this non-compliance with the Court's rules without seeking permission, thus providing additional grounds for his reply brief to be stricken.

As already discussed in defendants' motion to strike, plaintiff's disregard of the deadline and filing of an oversized brief conferred an unfair advantage to plaintiff and prejudice to the defendants, which could have been readily avoided by plaintiff requesting one more day *for all parties* to file their reply briefs. Whether by oversight or deliberate omission, plaintiff chose to proceed in disregard of the due date expressly and repeatedly stated on the docket, in court filings, and in communications between counsel.

Accordingly, for the foregoing reasons, defendants respectfully request that the Court strike Plaintiff's Reply Memorandum of Law in Further Support of his Motion for Reconsideration (DE # 464) and decline to consider any of the arguments contained therein.

We thank the Court for its consideration.

Respectfully submitted,

/s/Cheryl Shammas

Cheryl Shammas  
*Senior Counsel*

Cc.: All parties (*via* email and ECF)

# Exhibit A

**Shammas, Cheryl (Law)**

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**From:** Nat Smith <natbsmith@gmail.com>  
**Sent:** Wednesday, July 15, 2015 3:55 PM  
**To:** Scheiner, Alan (Law); John Lenoir; magdalena bauza  
**Cc:** Gregory J. Radomisli; norinsberg@aol.com; bbrady@ckbbblaw.com; wakretz@seiffkretz.com; mkoster@ckbbblaw.com; brianelee@idjlaw.com; Brian Osterman; gcohen@cohenfitch.com; Shammas, Cheryl (Law); Thadani, Kevin (Law)  
**Subject:** Re: Schoolcraft v. City - Monell schedule

All, Kicking out the date for replies on the reconsideration motions is fine with the plaintiff but we also do not want to move the other dates, including the JPTO dates. Nat

On Wed, Jul 15, 2015 at 3:26 PM, Scheiner, Alan (Law) <ascheine@law.nyc.gov> wrote:  
Dear Counsel:

Unfortunately due to a respiratory illness that has taken me out of the office, as well as obligations in other matters this week and next, I need to ask that we extend the Reply deadline for all parties on the motions for reconsideration.

Could we extend the date from July 17 to July 23?  
Please let me know if that is acceptable.

Thank you for your cooperation in this matter.

Sincerely, Alan

Sent from my iPhone

On Jul 8, 2015, at 2:57 PM, Gregory J. Radomisli <radomg@mcblaw.com> wrote:

We consent.

On Jul 8, 2015, at 2:27 PM, Scheiner, Alan (Law) <ascheine@law.nyc.gov> wrote:

Thank you – if the others could please confirm consent as soon as possible. Thanks, Alan

**From:** Nat Smith [mailto:natbsmith@gmail.com]  
**Sent:** Wednesday, July 08, 2015 2:24 PM  
**To:** Scheiner, Alan (Law)  
**Cc:** norinsberg@aol.com; bbrady@ckbbblaw.com; wakretz@seiffkretz.com; mkoster@ckbbblaw.com; brianelee@idjlaw.com; Brian Osterman; john.lenoir@gmail.com; gcohen@cohenfitch.com; Shammas, Cheryl (Law); Gregory J. Radomisli; Thadani, Kevin (Law)  
**Subject:** Re: Schoolcraft v. City - Monell schedule